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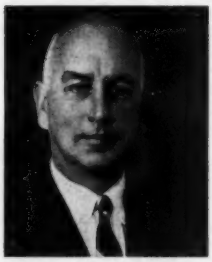

☆ ☆ ☆ ☆ ☆ ☆ ☆ ☆ A. STEVENS HALSTED, JR.

A Merited Salute

» » FROM A FAIRLY RECENT REPORT of the Committee on Federal Courts Criminal Indigent Committee, I am led to believe that a constant recurrent feeling exists, although not always expressed, among those who serve that their efforts are not fully appreciated. If that is correct, it is high time that the workings of these dedicated lawyers be aired, for I have yet to find a committee set up by the Association whose members deserve higher praise.* It is perhaps unnecessary to state that this Committee serves as a voluntary public defender, so to speak, for the benfit of indigent persons accused of federal crimes.

That they have not gone entirely unnoticed—although, like the proverbial prophet, not in their own country—is borne out by the fact that in two recent cases, no less a personage than the Chief Justice of the United States has seen fit to praise the panel members who brought their cases to the high court. He interrupted the Court proceedings to observe that freedom is secure when attorneys are willing to spend a great amount of time and energy gratuitously in furtherance of the administration of justice. This is high praise indeed, but more of this later.

The Committee was first set up in 1943 when Judge Mathes was serving as president of the Association. The number of criminal cases filed in the Central Division of the Southern District of California in that year was roughly 748. By 1960 that figure had increased to 1,063.

As might be expected, the work of the Committee has grown with the increase in the population and the case load. While statistical records are not complete, it is reliably estimated that currently the approximately 240 individual lawyers who take part in this defense work spend some 6000 hours in the representation of about 600 indigent defendants. From modest beginnings the Committee has developed a workable administrative pattern for the accomplishment of its purposes. While space does not permit a detailed description of all that is done, a few of the salient features may be of interest.

First and fundamental, the actual representation of defendants is carried out by individual lawyers who serve

*In his "President's Page" column in the September 1960 issue of the BAR BULLETIN, Grant Cooper gave the panel an accolade.

on the Indigent Defense Panels. Their duties to their clients are, of course, the same as if they were employed for a fee. In order to safeguard this relationship, it is standing procedure that no panel member may communicate with an indigent before going to court and actually being appointed by the judge to represent him. At that point, appropriate time for further proceedings in the action will be granted. In order to avoid imposition, procedure is set up for determining the entitlement of a defendant to representation as an indigent; also for relief from the employment if the circumstances warrant it.

The Committee functions solely on its own resources (except in rare instances when the Association feels justified in providing financial help and certain others in which the assistance is too unsubstantial to warrant mention) and makeshifts to meet this difficulty are inevitable. One assist that seems to give promise is the use in recent years of second and third year law students for research in the preparation of appeals. A program of this kind has been developed with the cooperation of the Law Schools of U.S.C. and U.C.L.A. The majority of the panel members are members of our Association. These lawyers can be classified in two main categories: (1) the relatively small group of experienced lawyers who find satisfaction in doing this work, including of course a few who are specialists in criminal law, and (2) recently admitted attorneys who are interested in receiving experience. It is interesting to observe that most of the panel members engage in civil practice.

The Committee has understandably had a tendency to rely on the first group for more than their fair share of the work. This "riding of the willing horse" has resulted in the reduction of this nucleus of experienced lawyers, and the first problem facing the Committee at the beginning of each year is to build up a list of panel members sufficient to serve the year out. An appeal to the Junior Barristers has produced good results. They have responded faithfully. Lest there be some misunderstanding of what is required that might act as a deterrent to Junior Barristers serving as panel members, it should be stated that members expert in the Federal Criminal Law are always available for consultation. From time to time the names of the attorneys participating in the program are published in the Bulletin. Members of the Association interested in participating on the panel should communicate with Mr. Arthur S. Bell, Jr. (DIamond 7-3611), who is the present Chairman of the Committee.

So much for the general background of the Committee's activities. Now for the romance. Not long ago, namely in June, 1959, and in April of this year, the Supreme Court of the United States handed down two decisions in cases which panel members had been successful in overturning convictions in the District Court. In the first, Harvey M. Grossman won the victory. Admitted to practice law a bare four years before he argued the case, he succeeded in obtaining by a five to four majority a reversal of a rule of law followed by the Court ever since 1914. See *Rios v. United States,* 4 L. ed. 2d 1688. Not bad at all!

This case was closely followed (for our purposes) by the decision in *Saldana v. United States,* 5 L. ed. 2d 855, in which the Court set aside a conviction in the District Court where it appeared that the combination of circumstances, beginning with one judge's imposition of a 20-year sen-

tence, was not consistent with the fair administration of justice. The case was argued for the government by the new Solicitor General, Archibald Cox,– incidentally, his first appearance before the high court in his official capacity. Although the case was hard fought all along the line, the Solicitor General finally acquiesced in the setting aside of the convictions under the counts necessary to support the 20-year sentence, leaving only the 5-year sentence in effect–this in view of assurances that subsequent administrative correction in the lower court's calendar system insured that what had occurred in the case could not occur again. Thus, although important constitutional questions were left undecided, the panel members won a victory for their client.

The two members representing the petitioner in the *Saldana* case were Messrs. Stephen R. Reinhardt and Herbert A. Bernhard; but that doesn't tell the whole story. Bernhard, it seems, had only practiced a year and a half at the time of argument,–only half the time required as a minimum for admission under Supreme Court Rules. It therefore took an order of the court *pro hac vice* permitting him to appear. Also good going, I should say!

Perhaps our congratulations to these young men and the Committee come too late. Anything we could say after the commendation of the Chief Justice would be anticlimatic. Anyway, it seemed to me that a salute is in order and that this is the most fitting place to give it.

THIS MONTH'S COVER

The cover picture is a lithograph by the French caricaturist, Honoré Daumier (1808-1879), entitled "Une péroraison à la Démosthène" (A peroration like Demosthenes). It with a number of other caricatures of members of the legal profession, originally published in the middle 19th Century, has been reprinted in Daumier, *Law and Justice*, Sauret, Monte-Carlo (Introd. Julien Cain, 1959). While Daumier's views of the lawyer are universally critical, it is noteworthy that, except for the *Vanity Fair* (magazine) reproductions (generally favored by those who like Gilbert and Sullivan and other heavily whimsical Anglophiles), Daumier's drawings are probably more popular with American lawyers than those of any other artist. The laborious "Hissonor" series does not count.

Last month's cover picture of Justice Lucien Shaw was furnished by the Historical Department of the Security First National Bank of Los Angeles.

The Rule 20 Controversy

Is the personal relationship between attorney and client in some instances jeopardized or controlled by intermediaries, such as labor unions or trade associations? This question was studied for several years by a succession of State Bar committees and then, last September, the Board of Governors proposed Rule 20, an amendment to the Rules of Professional Conduct that would restrict group legal services. The proposed rule reads as follows:

"*Rule 20.* A member of the State Bar shall not permit his professional services to be controlled or exploited by any lay agency or other intermediary, personal or corporate, which intervenes between himself and any client. A member of the State Bar shall avoid all relationships by which the performance of his duties may be directed by or in the interest of such intermediary. A legal aid association or society approved by the State Bar, rendering charitable legal assistance, shall not be deemed to be such lay agency or other intermediary within the meaning of this rule. A member's responsibilities and qualifications shall be and are individual. A member's relation to his client shall be personal and his responsibility shall be direct to his client. A member of the State Bar shall not accept professional employment by any association or other organization to render legal services to the members of such association or organization in respect to their individual affairs, nor shall he enter into with any such association or organization, any arrangement having for its purpose or one of its purposes the rendition of such legal services. This rule shall not prohibit acceptance by a member of the State Bar of employment from any such association or organization to render legal services in any matter in which the association or organization, as an entity, is interested when the subject matter will affect the association or organization as an entity."

Hearings have been held on the proposal and now, as we await the Board's action, we present here the opposing views of two Los Angeles attorneys on this controversial proposal.—THE EDITOR.

Statement in Opposition To Rule 20

By George E. Bodle

Partner,
Bodle & Fogel,
Los Angeles

» » RULE 20 IS, IN MY OPINION, unwise, unfair and unconstitutional. Its adoption would be directly contrary to the welfare of the attorneys of California and to the welfare of the community. The rule patently does not attempt to solve the real problems which face our profession today—the attrition of our traditional fields of practice as a result of the constant encroachment of lay organizations and laymen and the need of the public for low cost legal services. In fact, Rule 20 is a step in the opposite direction, a step which is certain to create endless confusion and litigation within our profession and arouse bitter criticism of our profession by the public.

Rule 20 constitutes a severe restriction on members of the public. It tells them that they are *not* free to choose certain lawyers they may want. Whether inadvertently or not, the Rule discriminates against lower income groups—people who do not often meet lawyers socially or in connection with their work and hence most likely need to be referred by an organization. It deprives these people of the right to utilize the services of the very attorneys they have reason to have confidence in. It provides that they may not be referred to the attorney who has represented the interests of the organizations to which they belong, the attorney who has previously sought to protect their legal rights. Moreover, in many cases the Rule will preclude lower income persons from receiving any legal counsel whatsoever.

Rule 20 does not involve a mere matter of legal ethics, proper for an integrated Bar to regulate. Rather it directly affects political and social issues of the broadest implications. Organized labor has already united in unqualified opposition to Rule 20. Other social and political groups, including the aged and minority groups, have announced their intention of publicly opposing the Rule. If the Bar insists on legislating with respect to broad issues of public policy, it will certainly weaken its ability to perform its legitimate functions. Further it will

BIOGRAPHICAL SKETCH OF GEORGE E. BODLE

George E. Bodle received his B.A. in 1930 and his LL.B. in 1933, both from Stanford University. He was a member of the three man State Bar Committee on Group Legal Services which first considered the present issues in 1957. He was also co-chairman of the Committee on Legal Representation (Labor Section) of the American Bar Association for the years 1959 and 1960. He is presently co-chairman of the Committee on Railway Labor Law of the ABA. Mr. Bodle, a member of the Los Angeles County Bar Association, heads an informal statewide committee of attorneys who are opposing adoption of proposed Rule 20. He is a partner in the firm of Bodle & Fogel and represents many labor organizations, including the Los Angeles County Federation of Labor, AFL-CIO.

be inviting the imposition of outside restrictions which I for one would deeply regret.

Equally important, Rule 20 serves to deprive attorneys of basic rights. The Rule precludes an attorney from accepting as clients persons referred by any organization he represents. The impact of the Rule on attorneys who number organizations among their clients can easily be seen. Recommendations by satisfied clients probably constitute the primary source of most of the business of lawyers everywhere. Few, if any of us, depend upon "drop-in" clients for our business. Not only have referrals and recommendations by clients as a source of business been repeatedly approved by the courts,[1] but this procedure has received the endorsement of the State Bar. In a pamphlet entitled "How to Employ an Attorney," copyrighted in 1952 by the Los Angeles Bar Association and later published and distributed by the State Bar of California, the Bar suggests that the proper way to find an attorney, like "any other professional man," is to ask "your friends, employer, neighbor, union representative, or anyone else." Such a limitation as Rule 20 would place upon these sources of business would have a most serious effect upon the practice of, perhaps, a majority of the lawyers of California.

Essential to a discussion of Rule 20 is an understanding of its purpose. Clarence L. Hunt, the Chairman of the Special Committee on Group Legal Services appointed by the Board of Governors of the State Bar on whose report the Rule is based,[2] recently characterized the Rule as a "clarification of existing rules of professional conduct.[3]

Since the existing Rules to which Mr. Hunt makes reference have been in effect since 1928, one might well ask why the need of codification at this date, and if a restatement of the Rules is the only purpose sought by the enactment of Rule 20, then one might with equal reason ask why such a vigorous campaign is being conducted for its adoption. It is submitted that the Rule itself and the Report of the Special Committee both refute Mr. Hunt's analysis.

There is clearly no such ambiguity in the present Rules of Professional Conduct involving the practice of law by attorneys who in the words of Rule 20 represent an "association or other organization" as to require a codifica-

[1]See, *e.g.*, *Chreste v. Commonwealth*, 186 S.W. 919, 926 (Ky. 1916); *In re Heirich*, 10 Ill. 2d 357, 387 (1957); *In re Brotherhood of Railroad Trainmen*, 150 N.E. 2d 163, 167 (Ill. 1958).
[2]35 *State Bar Journal*, page 710.
[3]*U.C.L.A. Docket*, Vol. V, No. 5.

tion. The Rules now explicitly prohibit members of the State Bar from soliciting "professional employment by advertisement or otherwise" (Rule 2), or the employment of another to solicit or obtain professional employment for an attorney or the sharing of compensation, directly or indirectly, with a lay person or organization (Rule 3). In addition, a member of the State Bar may not knowingly accept professional employment offered to him as a result of or as an incident to the activities of any person not so licensed or of any association or corporation that for compensation controls, directs or influences such employment (Rule 3). The relationship of any attorney with his client must be direct and personal and he may not ethically represent conflicting interests (Rule 7). Those of us who are in opposition of Rule 20 seek no change in the present Rules, and in fact they are not involved in any way in the present controversy.

The heart of the proposed Rule provides that a member of the State Bar shall not "accept professional *employment* by any association or other organization to render legal services to the members of such association or organization in respect to their individual affairs, nor shall he enter into with any such association or organization, any *arrangement* having for its purpose or one of its purposes the rendition of such legal services." (Emphasis added.)

The "employment" aspect of the Rule would have far-reaching consequences for businesses, groups and individuals who now band together to employ counsel to assist them individually in certain contingencies. In this category are shipowner associations, trade unions, trade associations, which represent their members in labor disputes, and such associations composed of individuals as the NAACP.

The prohibition against an "arrangement" is, however, even more inclusive, and in addition it is highly ambiguous. For an "arrangement" to exist, not even an agreement appears to be necessary. If an association refers its members who seek counsel to its attorney, or recommends its counsel to them, and the association attorney accepts such members as clients, all of the elements of an "arrangement" would seem to be present.

That this broad interpretation of the term "arrangement" underlies its use in the proposed Rule is apparent from a reading of the report of the Special Committee. The Special Committee does not attack referrals and recommendations because they are pursuant to an agreement between the association and its counsel. It attacks them on the assumption that they are morally and professionally bad *per se*, whether pursuant to an agreement or not.

Thus, the Rule is intended to prohibit all referrals or recommendations of members of an "organization" to the organization's attorney. The policy statement proposed by the Special Committee, which the Rule is designed to implement, makes this intention abundantly clear. It reads, in part, as follows:

"It is proper that a corporation, organization or group, may retain and employ legal counsel to serve it in any manner (scil. matter) in which such organization, corporation or group as an entity is properly interested. *Such lawyer shall not have referred to him by the group, either directly or indirectly, an individual member of such group or organization for the purpose of representing such individual member with re-*

spect to legal problems concerning his individual affairs. . . ."[4] (Emphasis added.)

The novelty of this concept can be appreciated when it is realized that such prohibition is to be effective even though the referral or recommendation is untainted by any of the practices with regard to solicitation, fee splitting, etc., which are presently proscribed by the Rules of Professional Conduct. It is particularly novel when one recalls the suggestion of the State Bar quoted earlier that a person in need of an attorney ask his "union representative" for his recommendation.

An attempt has been made by apologists for the proposed Rule to justify it by reference to Canon 35 of the American Bar Association. The significant portion of that Canon reads as follows:

> "A lawyer may accept employment from any organization, such as an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs."

But as Henry S. Drinker, who was Chairman of the A.B.A. Committee on Legal Ethics when Canon 35 was adopted, has pointed out, "The Canon does not preclude counsel for a corporation or association from representing its individual employees, patrons, stockholders or members, or groups of them, provided such employment has not been the result of improper solicitation, and provided such relation is personal and direct and the services paid for by the individual client . . . ".[5]

Thus Rule 20 may not be likened to Canon 35. For it deprives attorneys of the very right preserved to them under the Canon—the right to represent members of an association which itself is a client. Rule 20 contains other evils not present in Canon 35. The Rule covers only associations and does not apply to referrals by a corporation to its counsel. If there is any doubt that corporations are excluded from the scope of Rule 20, a careful consideration of some of the terms employed should dispel the illusion. Thus, it is the rendering of services to "members" of an association or organization that is subject to the rule. There is no regulation of the rendering of services to "shareholders, officers, or employees." Again, it is the attorney's relationship with an "association" or "organization" that is governed by the rule—not his relationship with a "corporation."

Such discrimination raises a serious constitutional question with respect to the "equal protection of the laws." Even aside from the legal question it seems difficult, if not impossible, to justify discrimination against fraternal and service organizations and labor unions, for example, as compared with corporations so far as "group practice" is concerned. Indeed, since corporations are normally profit-making institutions while fraternal and service organizations and labor unions are not, such grounds as exist for discrimination seem to point in the opposite direction.

In at least one other respect the rule appears certain to be open to a charge of discrimination. As the report makes quite clear, the rule is not intended to disturb relations with the so-called "treaty" groups, including the California Bankers Association, the Cali-

(Continued on page 290)

[4] 35 *State Bar Journal*, pp. 719-720.
[5] Drinker, *Legal Ethics*, 162 (1953).

Proposed Rule 20: A Necessary Safeguard

By FRANK SIMPSON

Partner, Sheppard, Mullin, Richter & Hampton, Los Angeles

« « PROPOSED RULE 20 of the Rules of Professional Conduct of the State Bar of California is presently a hotly controversial issue among many attorneys in the State of California. It is both supported and opposed upon many different grounds,[1] and even some of those who support it in principle contend that portions of its specific language are not wholly consistent with its objective. It would be impossible in the space available here to deal fully with all the issues, ramifications, pros and cons, effects and arguments involved in connection with Rule 20, but in any article in support of Rule 20, there are several aspects of the issue which are of such importance that they should be examined in detail.

Proposed Rule 20 is clearly designed to prohibit exploitation or control of an attorney's professional services by an intermediary which intervenes between the attorney and his client; as shown by the report of the California State Bar Special Committee on Group Legal Services[2] recommending adoption of Rule 20, the Rule is not aimed at any particular category of intermediary but includes apartment house owners associations, labor unions, automobile clubs, fraternal organizations, employer organizations, and numerous other such groups.

However, despite the fact that Rule 20 would apply with equal impartiality to any situation involving exploitation or control of legal services by an intermediary, regardless of the category of the intermediary, by far the most vigorous and articulate opposi-

[1]Group legal services (the prohibition of which is a prime objective of Rule 20) have been defined by the Special Committee on Group Legal Services of the California State Bar as follows (State Bar Journal [November-December, 1960], Vol. 35, No. 6, pp. 710, 712):

"This Committee understands the phrase 'Group Legal Services' to mean that legal services are being performed by a member of the bar to a group of individuals who have a common problem or problems, or who have joined together as a means of best bargaining for a predetermined position, or who have voluntarily formed or become a member of an association with the aim that such association shall perform a service to its members in a particular field or activity, or where by virtue of common interest as employer or employee it appears that the organization can gain a benefit to the members as a whole. Examples of such organizations are labor unions, employer organizations, trade organizations, teachers' groups, civil service employees of the state, county or city, club members of a social club or of an automobile club, or fraternal organization, and numerous other such groups. Included also in the definition may be groups who may associate themselves together for the purpose of establishing a plan of prepaid legal services to be rendered to individual members thereof, whether or not the members have a common interest in a certain field or activity."

The questions raised by group legal services and proposed Rule 20 are multitudinous. For example, one of the members of the panel on group legal services at the State Bar Convention in Los Angeles on September 28, 1960, expressed the view that group legal services presently violate the Rules of Professional Conduct of the State Bar of California and the Canons of the American Bar Association relating to advertising, solicitation, violation of client's confidence, sharing of fees with unlicensed persons, permitting an unlicensed person to practice law, and champerty and maintenance. Members of the Legal Ethics Committee of the Los Angeles County Bar Association have exhaustively researched the question and on April 25, 1961, adopted a resolution that "The plan of the Los Angeles Hotel-Restaurant Industry Emergency Relief Fund [a group legal service plan] and all similar plans violate one or more existing Rules of Professional Conduct and/or Canons of the American Bar Association."

The question has been raised whether or not

BIOGRAPHICAL SKETCH OF FRANK SIMPSON

Frank Simpson graduated from the United States Naval Academy and received his law degree from the University of Southern California. He spent five years on active duty with the U.S. Navy and is presently engaged in the general practice of law as a partner in Sheppard, Mullin, Richter & Hampton, Los Angeles. He was a member (1960-61) of the Los Angeles County Bar Association Committee on Legal Ethics during the time that proposed Rule 20 was before that committee.

tion to the adoption of the Rule has come from labor unions, which are only one of the many types of organizations which would be affected by the Rule. The principal argument advanced by the labor unions in opposition is that Rule 20 would prohibit group legal services from being available to persons who, in the absence of such group legal services, could not afford an attorney in times of trouble and need. Such an argument is a compelling one. Certainly no one, particularly a member of the Bar, would contend that a person's legal rights should go unprotected, his legal problems unsolved, his legitimate claims unprosecuted, or his legal needs unfulfilled merely because he cannot afford an attorney. It is precisely for this reason that there are such institutions as lawyers reference services, legal aid, federal indigent defense panels, and public defenders. Thus, on its face, there appears to be much merit in the unions' argument that group legal services, in addition to the existing forms of charitable legal assistance, should not be prohibited by the adoption of Rule 20.

However, an analysis of certain available information indicates that the question is not merely the simple one of being for or against providing legal aid to the needy; not only are there fallacies in the unions' argument, but there is evidence that behind the argument is an objective, unarticulated but apparently held by some, which is not nearly as altruistic as providing legal services to those who cannot afford them: namely, the

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Rule 20 would prohibit a member of the State Bar from serving as a Judge Advocate officer in the armed services, where the rendition of advice to the members thereof is a prime duty.

Some of the opponents of Rule 20 appear to contend that it is directed only at labor unions; however, the Rule would just as impartially prohibit house counsel of insurance companies from defending their insureds.

Other questions involve legal aid to the indigent; whether Rule 20 is necessary in view of existing Rules and Canons; and the very language itself of the proposed Rule.

For additional background material, see State Bar Journal (May-June, 1959), Vol. 34, No. 3, p. 318; State Bar Journal (November-December, 1960), Vol. 35, No. 6, p. 710; State Bar Journal (March-April, 1961), Vol. 36, No. 2, p. 163.

The present status of proposed Rule 20 is that it was tentatively approved by the Board of Governors of the California State Bar on September 25, 1960. The Board invited comment on the proposed Rule, decided to hold public hearings thereon in Los Angeles on May 24, 1961, and in San Francisco on June 21, 1961, and has deferred further action on the Rule pending the holding of such hearings. If the Rule is adopted by the Board of Governors, it will be submitted to the California Supreme Court for approval (Business and Professions Code § 6076); if approved by the Supreme Court, it would be binding upon all members of the State Bar and a wilful breach thereof would expose a member to discipline by reproval, public or private, or suspension from the practice of law for a period not exceeding three years (Business and Professions Code § 6077).

The Board of Trustees of the Los Angeles County Bar Association, on April 26, 1961, adopted a resolution approving proposed Rule 20 in principle, but reserving the right to suggest language changes.

On April 14, 1961, S.B. 1254 was introduced at the request of California Labor Federation, AFL-CIO. This bill would prohibit the Board of Governors of the State Bar and the Supreme Court of California from disciplining, reproving, or in any way penalizing any attorney engaged in group legal practice, even if the conduct violated existing Rules of Professional Conduct. If enacted, S.B. 1254 would, of course, prohibit the adoption or enforcement of proposed Rule 20.

[2]State Bar Journal (November-December, 1960), Vol. 35, No. 6, p. 710, 712.

objective of exploiting legal services as a means of furthering the strength and power of those who would exercise such exploitation.

In what follows, it should be clearly understood that no charge is made here that anyone who speaks in opposition to Rule 20 embraces, *ipso facto*, all or any portion of the matters which will be discussed; nevertheless, an intelligent appraisal of the expressed opposition to Rule 20 cannot be made without due consideration of certain facts not apparent on the surface of the opposition.

On October 9, 1959, a staff memorandum was sent to the California Director of the Agricultural Workers Organizing Committee (AFL-CIO). This memorandum pertained to the problem of how to "organize a target quota of 150,000 agricultural workers in California." Contained in the AWOC memo, in outline form, is the suggested program to be followed by AWOC in its organization of the agricultural workers. Item V of "Building the Framework" is of vital significance in any consideration of Rule 20 and its objectives; in the light of the social philosophies[3] of the AWOC memo, its expressly stated intention cynically to exploit the professional services of attorneys should be of grave concern to all members of the Bar:

"V. The Educating and Servicing of Community Groups.
  a. This is a continuous staff, volunteer organizer and rank and file operation.
  b. It aims at minority group and community penetration, *by making the union indispensable in their lives through*
    1. *aids in securing* welfare, medical and *legal aid*, housing etc."[4] (Emphasis added.)

It would seem apparent that Rule 20, if adopted, would inhibit, if not prohibit, the utilization of the legal profession as a mere tool in the process of organizing the worker.

With this in mind, we now turn to an analysis of the most extensive and comprehensive opposition to Rule 20 so far prepared: the "Brief in Opposition to Proposed Rule 20."[5]

The brief presents a variety of arguments against the Rule, but the two major arguments appear to be: (1) neither proposed Rule 20 nor the report upon which it is based recognizes evidence that shows conclusively the existence of serious problems as to the availability of adequate legal services to large segments of the public; (2) in passing upon the activities of labor unions directed toward assisting their members to obtain adequate legal services, the Rule and the report upon which it is based fail to take account of new concepts of the functions of such organizations which have developed and have found acceptance since Canon 35[6] of the American Bar

[3]*Compare* Karl Marx, *The Communist Manifesto*, Gateway ed. (Chicago: Henry Regnery Company, 1954), pp. 53-56.

[4]*Compare* directive issued by the International Red Aid (IRA) at its Second International Conference (Moscow, 1927):

"The proletariat must gather and organize those lawyers and learned barristers in various countries who sympathize with the liberation struggle and are prepared, together with the legal bureau of the IRA, to assist and give legal help to the victims of the class domination of the bourgeoisie . . .

"To organize legal bureaus in every country where they do not yet exist and where this is possible, in particular in England, the U.S.A. and Japan . . .

"To strive to enlarge the number of lawyers who take part in this work by attracting more and more new cadres of lawyers and jurists who can be stimulated by their own interests and their sympathy with the revolution to gather around the IRA legal bureau."

The International Red Aid was established by the Comintern in 1922 for the purpose of providing organizations of lawyers for the legal defense of Communists and Communist causes in all parts of the world.

[5]This document has been filed with the Board of Governors of the California State Bar. It is signed by eighty-six California attorneys, of whom at least twenty are attorneys for labor unions.

[6]"35. *Intermediaries.* The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the perform-

Association was adopted.[7]

There are some fallacies in both of these arguments.

a. *The Fallacy with Respect to the Non-Availability of Adequate Legal Services to Large Segments of the Public.*

The "Brief in Opposition to Proposed Rule 20" cites some statistics[8] in support of its conclusion that a *"large proportion"* of wage and salary earners are not able to afford the legal services that they need. Although the statistics are not particularly convincing as a basis for such conclusion,[9] it must be conceded that *some* of the population (although not necessarily a large segment of it) is in need of financial aid in obtaining legal services. This is clearly the premise upon which such existing independent institutions as lawyers reference, legal aid, public defender and federal indigent defense panels are predicated.

The Brief, however, finds fault with each of these services: legal aid and public defender services, because they can aid only the true indigent, and not the person who is not indigent but does have limited financial resources.[10] Other criticisms of legal aid and the public defender are said to be that they have inadequate funds, facilities and personnel, and are so overburdened that they cannot render effective services.[11]

Lawyers reference services are criticized because, although they may help in finding a lawyer, they do not help in paying his fee.[12] They are further criticized on the ground that they do not solve the problem that a large proportion of the legal difficulties of working families involve such small sums that ordinary practitioners cannot handle them economically and will not accept them.[13]

Other criticisms of lawyers reference services are that they are unavailable on such occasions of crisis as arrests at night; that most attorneys to which reference might be made might handle the typical type of matter (such as a $50 wage claim) with less competency and efficiency than is desirable and probably not at a reasonable fee; and that lawyers reference services are impersonal because they do not satisfy the deep demand of the person in legal trouble for assurance, from a trusted source, that the attorney to whom he is referred is not only competent but is interested in his problems and in sympathy with his aims.[14]

(Continued on page 292)

ance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigents are not deemed such intermediaries.

"A lawyer may accept employment from any organization, such as an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs."

[7]A breach of the Canons of Ethics of the American Bar Association does not expose a California attorney to disciplinary proceedings, unless the same conduct also breaches a Rule of Professional Conduct of the State Bar of California; the Canons of Ethics are merely commended to the members of the State Bar. (Rule 1, Rules of Professional Conduct of the State Bar of California.) Consequently, whether or not Canon 35 is interpreted as prohibiting group legal services is not germane to the question of whether a Rule of Professional Conduct should be adopted in California which would expose an attorney to discipline for providing group legal services.

[8]Pages 27-28.

[9]The statistics cited merely indicate that wage and salary earners do not spend much money for legal services. From the statistics used, the Brief concludes that a large proportion of wage and salary earners, as a group, cannot *afford* legal services; however, an equally logical conclusion from the same statistics would be that wage and salary earners, as a group, do not *need* legal services. This is not to say that they do not in fact need such services, but merely to point out that the statistics used in the Brief provide a questionable foundation for the conclusion derived from them. Elsewhere, is has been estimated that at some time in his working life one out of every 50 employees is faced with a situation where he is unable to pay for adequate legal representation in connection with civil or criminal court litigation. Tennant, *Support of Legal Aid by the Business Community*, 44 Journal of the American Judicature Society 170, 173 (February, 1961). This is 2%. There should be some form of legal aid available to this 2%, but the percentage itself is hardly a large one.

[10]Brief in Opposition to Proposed Rule 20, p. 29.

[11]*Id.*, at 30.

[12]*Ibid.*

[13]*Ibid.*

[14]*Id.*, at 31-33.

The BULLETIN *here publishes the uncommonly knowledgeable and relevant address given by Ralph G. Lindstrom at the Association's dedication of the Lincoln bust on Law Day.*

LINCOLN: Lawyer-Logician

Ralph G. Lindstrom, born in the land of Lincoln, naturally adopted Abraham Lincoln as his working model when he undertook the study of law at the University of Denver. He practiced law in the State of Colorado from 1918 to 1930, when he moved his practice to Los Angeles. He is now the senior partner of the firm of Lindstrom, Robison & Lovell.

A Lincoln scholar and authority, Mr. Lindstrom is Chairman of the Board of the Lincoln Sesquicentennial Association of California, honorary member of the National Lincoln Sesquicentennial Association, member of the Lincoln Club of Los Angeles and president of the Lincoln Fellowship of Southern California.

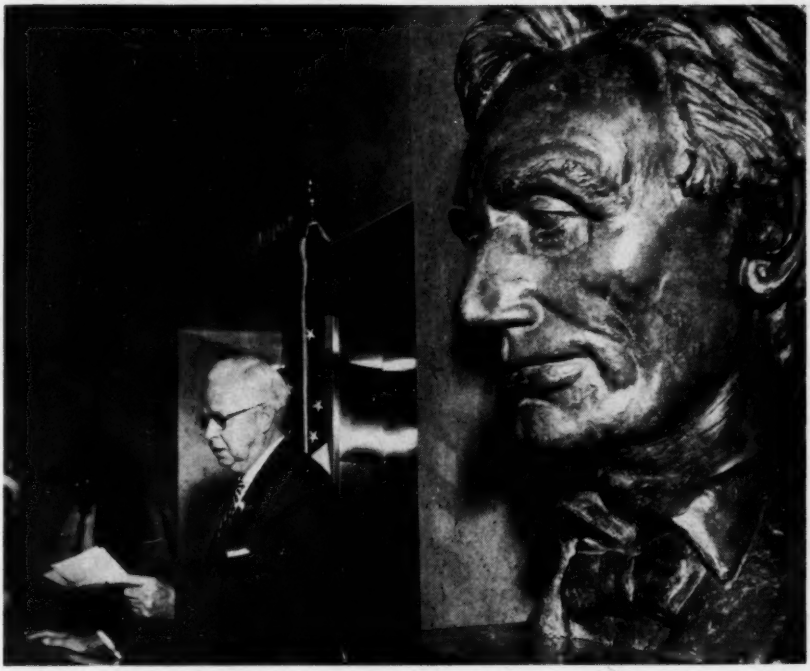
Mr. Lindstrom delivered the Lincoln Day address in the Ford Theatre in Washington on February 12, 1950. This address was radiocast over the Voice of America, beamed to Europe, Asia and South America, and reprinted in the Congressional Record.

As one of the Trustees of the Abraham Lincoln Association of Springfield, he took keen interest in release of the definitive edition of Collected Works in nine volumes which were published as of February 12, 1954. His own books include *Lincoln and Prevention of War* and *Lincoln Finds God*. Mr. Lindstrom currently is working on *Lincoln and Man's Vast Future*.

» » NEXT TIME YOU'RE IN WASHINGTON, try slipping away all alone, to the Abraham Lincoln Memorial, after nine at night, when the guards have "put Lincoln to bed" (as they say) by turning on the blue night lights. Stand about eight steps from the top, and really search the form and face of Lincoln until your thought is quieted from the excitements of frenetic Washington and the professional purpose of your trip. Feel a sense of the overbrooding presence of this saviour of our Union looking out over the Washington political scene. It will lift thought and purpose above all the littlenesses of life, to contemplation of America's destiny—the achievement of what Lincoln came to call "Man's Vast Future."

So here, let's not breathlessly breeze by this bust, but pause a while to study the wonderfully portrayed face of this lawyer Lincoln, until we feel the uplift and inspiration of the Lincolnian mind and heart; until we feel the purposefully poised persistence with which he pioneered solutions without which our federal union could not have been saved.

As lawyers, when we feel the pressures of law practice, let's once stand here a while and contemplate law practice on the old Eighth Circuit Court in central Illinois in Lincoln's day. Twice a year he travelled the full circuit, as big as Connecticut. It took three months. He and Judge David Davis were the only two who covered the entire twelve counties. Lincoln travelled, prior to railroads, by horseback and buggy, over prairie trails, through storms of rain, sleet and snow, through mud and swamp, fording



LINCOLN ORATOR—Ralph G. Lindstrom is shown delivering dedication address at LAW DAY 1961 ceremonies at the Los Angeles County Courthouse following unveiling of Abraham Lincoln bust presented by Los Angeles County Bar Association.

swollen streams; slept in filthy taverns, two, sometimes three, in a bed; and ate food of poor quality, atrociously prepared, and served on greasy table cloths. Yet Lincoln was never heard to complain. But portly Judge Davis wrote his wife of a typical tavern as "a dirty place, plenty of bedbugs, etc. This thing of travelling in Illinois, and being eaten up by bedbugs and mosquitoes (fleas you know don't trouble me much) is not what it is cracked up to be."

Lincoln carried only two books in his saddle bags: Euclid's Geometry and an Illinois Code. Why Euclid? Because his one term in Congress and encounter with men of more adequate schooling, persuaded him that the flamboyant prairie oratory was not going to be enough. He told a friend he aspired to the ability to so clearly state a proposition and conclusion that the very statement would demonstrate the truth of his proposition. So he studied geometry in the long hours and days of travel, alone, about the circuit, until he could work out every geometric problem in the Six Books of Euclid.

One night Lincoln's room-and-bedmate in a tavern went to sleep with Lincoln lost in study before the open fire. At dawn the other man awakened to find Lincoln still sitting before the now-gone-out-fire. "What are you doing, Lincoln?" Lincoln stirred out of deep thought. "I've just got it; I've

just got it!" "Just got what?" "I've just worked out the next-to-the-last problem in Euclid." He had few books. He did much deep thinking.

Compare Lincoln's spread-eagle oratory in his Young Men's Lyceum Address, "The Preservation of our Institutions," with his Gettysburg Address, and you will see how Euclid disciplined a fine mind. Recall that at Gettysburg he spoke of this "nation, conceived in liberty and dedicated to the proposition that all men are created free and equal."

At each of the twelve county seats Lincoln had a sort of local partner, with whom he interviewed witnesses on the court house lawn, and then went to trial. Sometimes his associates despaired over his "I reckon that's right." They felt he was giving away his case; but Lincoln ended up, impressed and impressing, with the pivotal point.

What if Lincoln had stayed in Congress, and then gone on to the Senate, instead of being retired to years of political eclipse and law practice on the old Eight Circuit? Through long days of riding alone over the prairies, his mind was deepening and greatening as he wrestled through to conclusions. The superheated political atmosphere of Washington could not have thus prepared him for our nation's crisis.

In writing the First Inaugural before he left Springfield, he consulted only four texts: Henry Clay's 1850 speech on the Missouri Compromise; Andrew Jackson's proclamation against nullification; Webster's Reply to Hayne; and the Federal Constitution. Do we sometimes consult so many books *about* the Declaration of Independence and the Constitution that we forget to study afresh these source documents themselves?

Consider the constitutional questions which Lincoln pioneered in a time when emotions were befogging intelligence. The allocations by delegation and reservation of sovereign law-power as between our nation and the states; and the civic nature of each American as a multiple citizen with many separate areas of loyalty, no one in conflict with any other when really thought through, were products of civic logic. Such civics, such federal-system citizenship, can exist only where there is political maturity. Lincoln was politically mature. For example:

Lincoln hated slavery. He said if slavery was not wrong, nothing was wrong. Yet he knew the Constitutional Fathers, South no less than North, also considered slavery an evil. They dealt with it only as an existing evil. They adroitly controlled it and no less adroitly placed it, as Lincoln put it, "in the course of ultimate extinction." These men were mid-roaders who sought solutions for facts as they were. But self-righteous abolitionists in the North were one extreme; self-centered slavery expansionists in the South were the opposite extreme. These extremes precipitated Civil War.

Lincoln, in 1845, wrote to his friend Williamson Durley:

> "I hold it to be a paramount duty of us in the free states, due to the Union of the States, and perhaps to liberty itself (paradox though it may seem) to let the slavery of the other states alone; while, on the other hand, I hold it to be equally clear, that we should never knowingly lend ourselves directly or indirectly, to prevent that slavery from dying a natural death— to find new places for it to live in, when it can no longer exist in the old."

We hear much, sometimes too

much, of states' rights. We hear little, too little, of state responsibilities. It is as important, in preserving state sovereignty, that we know its limits no less than its area. Some occasions put control in the state; other occasions transfer that control to the federal level. For example:

Governors Dennison of Ohio, Norton of Indiana, Curtin of Pennsylvania, Randall of Wisconsin, and Blair of Michigan, convened in war conference on May 3, 1861, to decide how the President should conduct the Civil War. They thought they met as State Commanders-in-Chief of their several state militias. They acted like the board of directors of a corporation, deciding policy for their corporate president to carry out. They got so carried away that in one evening of perfervid oratory they fought and won, the Civil War by their sheer *ipse dixit*. It was funny—but desperately tragic. Governor Dennison said the time for speaking had passed—so he made a speech! Randall of Wisconsin floated his Wisconsin boys down the Mississippi, had them cut a broad path over to Charleston, razed that city so that there was "no place for the owl to hoot nor the bittern to mourn"—all in one speech.

But Lincoln, the federal Commander-in-Chief, needed soldiers, and equipment. These governors were not *then* even active commanders of their militias. They forgot that the moment a state militia is impressed into national service, the governor's state commander-in-chief functions are, for the time, quiescent. The militiamen serve under their *state* citizenship until impressed into national service; then as multiple citizens they serve under the federal level of their citizenship, under United States command. The governors were not subordinated; they were not demoted. Their functions as state commanders were simply in suspense. The functions of the militia were, for the time, shifted from state to nation. The same men were now serving on the federal level of their citizenship for the duration.

These governors and the abolitionist wing of the Republican Party thundered at Lincoln to emancipate the slaves. Lawyer Lincoln knew that at the federal level such a proclamation was beyond his and federal power, except as military necessity. Gubernatorial political pugnacity would have lost the border states—and the war. Lincolnian political sagacity saved the border states—and the Union.

Lincoln did not fight to free the slaves, but to preserve the Union; to prove that secession was not legally possible. Yet the radicals of his own party, Chase in his Cabinet, Sumner, Wade and like-minded Senators, Stevens and like-minded Congressmen, constantly sought to treat the southern states as seceded and conquered territory. Sumner developed his absurd state-suicide doctrine. But lawyer Lincoln never deviated. The states had *not* seceded; *could* not secede. The acts of so-called secessionists were not acts of states. They were mere nullities. And so Lincoln proceeded with reconstruction of state governments within the federal system. We are still paying with sectional strife for reversal of his purpose after the assassination.

Too many still stumble over the "self-evident truth" of our Declaration of Independence—that "all men are created free and equal." Some have even called it a "self-evident lie," as Senator Pettitt of Indiana did in the 1850's. When we think of Africa and the Congo today we could easily be made doubtful unless, like Lincoln,

we think it through. He never qualified the area of application. He said it applied to all men. It does not declare that all men are equal in *attainment* or *achievement*. It does declare that every man, everywhere, is entitled (as Lincoln put it) to "an unfettered start, an equal chance, in the race of life." What the individual *does* with his equal chance, his unfettered start, is up to the individual. The equality is opportunity. To *assert* equality without attainment or achievement is absurd. To *deny* progress toward equal opportunity and unfettered start, and then point to inequality of achievement, is equally absurd—and highly dangerous to civilization now that men who have been deprived of both constitute perhaps a three-to-one majority in the world and may come to control it without fit preparation.

Yes, gentlemen, we may sometimes feel weary and frustrated under the economic and professional whiplash. But when we pass by this Lincoln bust let's stop a while and study the face of this lawyer and civic logician, whose prodigious contribution to preservation of our federal union and federally apportioned law-power should keep him alive in the heart and mind of America. Either Lincoln still lives in the heart and mind of America, or America will fail in its civic mission of enabling men in a well-nigh timeless and spaceless world, to achieve "man's vast future." Let's let Lincoln live in and "unlittle" our lawyer-lives.

WHAT PRICE FREEDOM?

Certain Tax Incidents of Property Settlement Agreements

By Louis Lee Abbott

Mr. Abbott did undergraduate work at both Dartmouth and The Massachusetts Institute of Technology, and received his LL.B. from USC. He served with the Office of the U.S. Attorney for the Southern District of California. At the present time, Mr. Abbott is a member of the firm of Webster and Abbott, Beverly Hills.

» » PROPERTY SETTLEMENT AGREEMENTS incident to divorce frequently provide for transfer of property to a spouse in excess of the interests theretofore vested. Such transfers may be in consideration for waiver of support (in whole or in part) or of other marital rights, including perhaps, a claim to more than one-half of the community property pursuant to Civil Code §146. Sometimes the more generous transfer is the means by which a restless spouse buys freedom. Significant tax results follow from the determination of whether such a transaction is a "sale."

On March 1, 1961, the Court of Claims decided ***Davis vs. United States***, 287 Fed. 2d 168, in favor of a husband who sought refund of capital gains tax measured by the difference between the fair market value of property transferred to his wife pursuant to property settlement agreement and the basis of that property in the husband's hands. The Court recognized that the husband had received economic gain, in that the consideration received by the wife was undoubtedly valued by her at its then market, but denied that there was a taxable gain. Taxable gain exists only when consideration *received* by the taxpayer has an ascertainable value. It was assumed that Mr. Davis sought release of certain marital rights of his wife (including dower) and his freedom, a package which could not be valued in dollars. Accord: *Marshman*, 279 Fed. 2d 27 (6th Cir. 1960). But the Second and Third Circuits have reached a contrary result by treating the consideration received by the taxpayer as having value equal to the assets transferred by him. *Halliwell*, 131 Fed. 2d 642 (2d Cir. 1942); *Mesta*, 123 Fed. 2d 986, (3d. Cir. 1941).

The Davis case involved but one of the several tax incidents of a "sale" between estranged marital partners, that is, the capital gains tax which may be asserted as against the transferor. The concomitant effect is that the transferee receives a new basis for the asset. If the transfer is of depreciable property and is made prior to the divorce of the parties (as usually it is) the gain will be taxed as ordinary

income! I.R.C. §1239. But should there be a loss in a "sale" between spouses, the transferor will not be entitled to a capital loss deduction. I.R.C. §§267 (a) (1), 267 (c).

Although the *Davis* case did not originate in a community property state, it has significance in California. It is generally recognized that a true partition of community property with each party receiving one-half of, or a one-half interest in, each of the community assets, is not a taxable event and does not affect basis of the property so divided. Where the division is equal in value received, but effected without partition in kind of each asset, the same result has been reached although the risk of "sale" is greater. See: *Davenport* 12 T.C.M. 856 (1953); cf. *Johnson*, 135 Fed. 2d 125 (9th Cir. 1943). However, transfers effected in relation to settlement of community property rights are regarded as sales if there is a substantially disparate division of the community assets, *Rouse*, 6 T.C. 908 (1946), or where outside consideration, that is, an asset not part of the community holdings, enters into the transaction. *Brown*, 12 T.C.M. 948 (1953).

The situation is further complicated by the popularity of integrated property settlements. See: *Dexter vs. Dexter*, 42 C. 2d 36, 40, (1954); *Flynn vs. Flynn*, 42 C. 2d 55, (1945). Frequently, one of the parties—usually the husband—will desire to avoid future changes in the alimony rate by entering into an integrated bargain which so relates the provision for support to the division or adjustment of property interests as to make one consideration for the other, and thus deny to the Court power to alter the contractually fixed payments. The obvious tax hazard is that the transfers so made, being not a simple partition of community property, will be resolved by application of *Halliwell* and *Mesta*, rather than of *Davis* and *Marshman*.

The holding of the *Davis* case is applicable to transactions of the character last described to the extent that consideration received by the transferor taxpayer is incapable of valuation. It is in this area that substantial uncertainty to the California taxpayer will remain. Until the conflict is finally resolved, California attorneys will be well advised to avoid undue reliance upon the *Davis* and *Marshman* cases in determining the tax consequences of division and allocation of property preceding or accompanying divorce.

notes from your Law Library

by JOHN W. HECKEL • Head Reference Librarian, Los Angeles County Law Library

CONSTITUTIONAL LAW: *Principles, Politics, and Fundamental Law, Selected Essays* by Herbert Wechsler, Professor of Law at Columbia Law School (Harvard University Press, 171 p.) contains the Holmes lecture in which the neutral theory of Supreme Court decision is expounded. Others deal with Justice Stone, federalism, and the importance of the Nuremberg Trial. *The Presidency and Individual Liberties* by R. P. Longaker (Cornell University Press, 239 p.) considers the recent history of the President in problems of leadership and relations with Congress in enforcing civil rights as they influence public opinion. *The Federalist,* edited by J. E. Cooke (Wesleyan University Press, 672 p.) collects the essays and examines the text to provide an authoritative reading with notes on variants.

CRIMINAL LAW: *Searches, Seizures and Immunities* by Joseph A. Varon (Bobbs-Merrill, 628 p.) treats the constitutional aspects, the law of arrest, procedures involving search warrants, self-incrimination, immunity and entrapment. Citations to cases and statutes are included. Another volume will be published later.

EVIDENCE: *Modern Scientific Evidence* by J. R. Richardson (Anderson, 358 p.) covers both civil and criminal aspects. The book is divided into two parts, the first devoted to legal aspects of the admission of evidence and the second devoted to radar devices, lie detectors, truth serum, blood grouping tests, intoxication tests, wire tapping, and ballistics evidence among others.

INTERNATIONAL LAW: *Internationalized Territories* by Meir Ydit (Sythoff, 323 p.) treats the development of the modern idea of internationalized territory from the time the Treaty of Paris, 1815, established the Free City of Cracow to the present suggestions for a Free City of Berlin. The status of Trieste, Danzig, Jerusalem, Tangier, Shanghai and Crete are also examined.

JURISPRUDENCE: *The Judicial Decisions Toward a Theory of Legal Justification* by R. A. Wasserstrom (Stanford University Press, 197 p.) presents the philosophical arguments involved in the process of law in action, contrasting the rationalistic or deductive decision procedure with the logical procedure.

LABOR LAW: *Anatomy of a Labor Arbitration* by Sam Kagel (Bureau of National Affairs, 182 p.) is a practical and broad book devoted to the problems which arise in the handling of a grievance in arbitration. Case material is interpolated with comments.

LEGAL HISTORY: *Law and Social Process in United States History* by James W. Hurst (University of Michigan Law School, 361 p.) studies cases as they reflect the role of law in American History. The book is organized

around the ideas of drift and direction, initiative and response, leverage and support, and force and fruition. These papers were delivered as the Thomas M. Cooley Lectures.

MARITIME LAW: Pike and Fisher have started a new loose-leaf service in three volumes. Volume one is devoted to Shipping Regulations which contains the legislative history of the Marine Acts. Also included are maritime regulations and the operating-differential subsidy. Volume two is a digest of cases arranged by the statute involved. Volume three reports the current court cases and decisions of the Federal Maritime Board and the Maritime Administrator as well as memoranda of the Board and Hearing Examiners on interlocutory matters.

MEDICO-LEGAL: *The Extremities: A Law-Medicine Problem* (Anderson, 289 p.) prints the proceedings of an institute at the Law-Medicine Center, edited by Oliver Schroeder. Diseases and injuries of the arms and legs form the subject matter.

PUBLIC UTILITIES: *Principles of Public Utility Rates* by James C. Bonbright (Columbia University Press, 433 p.) surveys the problems in fixing rates which are reasonable and not unduly discriminatory. The author, an authority on valuation, writes from the point of view of an economist, a public official and a participant in disputed rate cases. The book is in three parts: basic standards of reasonable rates, fair return standards, and the rate structure.

SUPREME COURT: *Congress Versus the Supreme Court, 1957-1960,* by C. H. Pritchett (University of Minnesota Press, 168 p.) is the story of the attempt to limit the power of the Supreme Court, spearheaded by the American Bar Association and the Conference of Chief Justices, both of

whose reports and resolutions are printed in the appendices. The Smith Act, pre-emption, passport and loyalty-security issues are treated.

TRIAL PRACTICE: *The Trial Lawyer's Seminar,* 1959 and 1960 by the Phoenix Chapter of NACCA (Central Book Co., 247 p.) contains talks on recent developments in tort law, malpractice, medical witnesses, trial tactics and the handling of a whiplash case. A similar work is *Medical Facts for Legal Truth* published by the Law-Medicine Center of Western Reserve University (Anderson, 288 p.) It contains papers on trauma, the medical memorandum, medical ethics and expert medical testimony.

ZONING: *Proceedings* of the 1960 Institute on Planning and Zoning of the Southwestern Legal Foundation (Matthew Bender, 197 p.) consists of talks on metropolitan government, aesthetics in zoning, residential and industrial platting, flood control and zoning administration. Roger Arnebergh, Los Angeles City Attorney, contributes a paper on the functions and duties of a Board of Zoning Adjustment.

EDITOR'S NOTE

The caption for the photograph appearing in the lower part of page 238 of the May issue of the BULLETIN incorrectly identified the person standing on the far right of the Bar Association group present at the dedication of the Lincoln Bust as Ralph G. Lindstrom, principal speaker; such person was, in fact, Merrell Gage, the sculptor of the bust. Mr. Lindstrom's picture appears in this issue with the reprint of the speech which he gave at such dedication.

The word "not" appearing in the May 1961 BULLETIN, p. 234, right-hand column, line 9, should have read "now."

BAR ACTIVITIES

Calendar

Los Angeles County Bar Association

Committees

June 1—Tax Committee, 12 noon
Insurance, 12:15 p.m.

June 2—Public Relations, 12 noon

June 5—Membership, 4:00 p.m.

June 12—Pleading and Practice, 12:15 p.m.

June 21—Corporate Law Departments, 12 noon

Sections

June 8—Tax Talk, Conference Room, Biltmore, luncheon 12 noon.

June 23-24—Continuing Education of the Bar. Federal Civil Practice. Los Angeles.

Junior Barristers

June 16—Monthly luncheon meeting, University Club, 12 noon.

General Monthly Meeting

June 22—Biltmore Bowl, 12 noon. Speaker: Dana Latham.

Affiliated Associations

June 1—Beverly Hills Junior Bar, luncheon, Blum's, Beverly Hills.

State Bar of California

Delegation to State Bar Conference

June 13 — California Room, Alexandria Hotel.

June 15 — California Room, Alexandria Hotel.

September 25 to 29—Thirty-third annual meeting, Monterey.

American Bar Association

August 7 to 13—Annual Meeting, Chase-Park Hotels, St. Louis, Mo.

(Official announcements concerning events of interest to members of the Los Angeles County Bar Association will be included in the Calendar as space permits. The deadline for submission of dates is the 20th of the prior month. Please send information to the office of the Bar Association.)

List of Persons Contributing to the Bust of Lincoln Through May 26, 1961

Robert W. Fulwider, William K. Rieber, John M. Lee, Warren L. Patton, Perry E. Turner, Frederick E. Mueller, I. Morley Drucker, Ralph G. Lindstrom, Jack R. Lovell, William T. King, Levy, Russell, De Roy & Geffner, Hon. Paul Nourse, Homer D. Crotty, George Gardner, Malcolm Davis, Richard Fitzpatrick, Joseph D. Peeler, Herbert Freston, Stanley C. Anderson, Stuart McHaffie, Lon S. McCoy, Martin Forrest, Elmer P. Bromley, Florence M. Bischoff, Hon. Mildred L. Lillie, Harold M. Stern, Leslie S. Bowden, E. Talbot Callister, Walt A. Steiger, Andrew J. Copp, Jr., Roscoe C. Andrews, Don Lake, Howard E. Beckler, Albert Mosher, John S. Chapman, Kenneth O. Rhodes, Ransom W. Chase, Rollin L. McNitt, Clyde E. Holley, William T. Coffin, Edward L. Compton, Oscar S. Elvrum, Kenneth Sperry, Walter S. Hilborn, John T. Riley, Clyde C. Shoemaker, Robert F. Diekman, John N. Cramer, Lloyd Melvin Smith, Charles Greenberg, A. S. Halsted, Jr., George W. Cohen, G. Harold Janeway, Hon. Parker Wood, Edward H. Gaylord, Hon. Emil Gumpert, James F. Covington, Jr., James A. Miller, Roger B. Smith, Gabriel C. Duque, Jr., William J. Cusack, James R. Hutter, Hon. Philip H. Richards, Milford Springer, Lawrence L. Otis, Preston B. Hotchkis, Russell A. Bradley, Henry L. Knoop, Roland T. Williams, George H. Zeutzius, Peter T. Rice, William A. Cruikshank, Jr., Hon. Jerold E. Weil, William B. Himrod, Stephen Monteleone, Henry F. Walker, Merton A. Albee, Sidney A. Moss, Millard M. Mier, J. B. Tietz, Spencer C. Olin, Frank C. Hubbard, Alfred Lawrence, Hon. James G. Whyte, Francis M. Wheat, Hon. Frederick F. Houser, Norman H. Sokolow, Hon. Gilbert H. Jertberg, Thomas J. Ryan, L. A. Lewis, LeRoy E. Lyon, Jr., Theodore A. Epstein, Eugene D. Tavris, F. Carlton Myers, Selma Moidel Smith, Alex Steinberg, Alfred B. Gellman, Anonymous, A. Calder Mackay, Arthur McGregor, Adam Y. Bennion, Richard N. Mackay, Stafford R. Grady, Charles J. Higson, Bruce G. McGregor, E. Robb Livingston, Beardsley, Hufstedler & Kemble, Vernon P. Spencer, Philip H. Harris, George E. Cannady, Curtis H. Palmer, R. J. Obringer, Charles E. Horning, Jr., Allen E. Susman, David Mellinkoff, Knapp, Gill, Hibbert & Stevens, William French Smith, Marvin A. Freeman, Walter Ely, Nathan O. Freedman, Gerald Bridges, Robert S. Butts, W. P. Smith, Denis Evarts Bowman, Pearlson and Pearlson, Roger C. Pettitt, Hon. Steven S. Weisman, Richard A. Turner, Joseph Kurtz Horton, E. Avery Crary, A. R. E. Roome, Overholt & Overholt, C. W. Bowers, Pierce Works, Abraham B. Mandel, Edward P. Callahan, Harold A. Black, Stanley C. Lagerlof, W. Verne Ahrens, Cannon & Callister, Joseph A. Allard, Jr., L. A. Shelton, Maurice O'Connor, Charles S. Vogel, Raymond V. Haun, Henry H. Childress, Collins, Woolway & Hurt, James Ahlefeld Flanagan, E. C. Freutel, Henry J. Walsh, Edwin J. Miller, C. C. Dillavou, M. B. Silberberg, Robert N. Gold, Robert E. Austin, J. H. Cummins, Max G. Kolliner, Shepherd and Shepherd, W. C. Mullendore, Eugene Overton, Charles H. Older, Andrew M. Pence, Ray J. Coleman, Thomas B. Irvine, Ralph B. Hubbard, Richard Loewe, F. A. Knight, Charles A. Thomasset, George Gore, Matthew S. Rae, Jr., Olin Wellborn, III, Felix H. McGinnis, W. Joseph McFarland, Milton Zerin, William F. Price, James T. Wood, III, Arthur S. Bell, Jr., Phyllis Margulis, Charles B. Stewart, Jr., Newton Van Why, Howard Hemenway, Mae Carvell, J. Robert Arkush, Baldo M. Kristovich, Neil A. Lake, Frank Fishkin, Eugene L. Stockwell, J. L. Feinfeld, Roscoe R. Hess, David S. Smith, Harry D. Salinger, Edmund W. Cooke, William C. Stein, L. D. Lawrence, Howard C. Erickson, William R. Drayton, Jr., Neil B. Ross, Wm. Irl Kennedy, Harrison Harkins, Victor E. Koch, John D. Taylor, John P. Scholl, James S. Yip, Alvin D. Rosenbloom, Fred W. Raab, Jr., James H. Kindel, Jr., Hugh W. Darling, Edward S. Shattuck, Douglas L. Edmonds, Matthew S. Rae, Jr., Donald Keith Hall, George G. 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fornia Land Title Association, Automobile Associations, and Insurance Adjusters. Yet some of these groups seem to be "exploiting" legal services under the criteria advanced by the Committee. Furthermore, liability insurance companies, which are expressly excepted from consideration in the Special Committee's report, are engaged in the exploitation of the services of attorneys; they undertake, for profit, to defend prospective policyholders in the event of suit against them. Claims are defended even if the defense be frivolous, and in some cases where the defense cannot affect the liability of the company on any theory. Although the social utility of exempting such groups is undeniable, an equally good case can be made for exempting certain types of activities which are clearly embraced within the proposed rule.

The fact that an even-handed application of the proposed Rule to all types of clients, including corporations, is expressly rejected, lends credence to the contention that the Rule is intended to affect only certain groups. Thus, it may be that an "arrangement" is thought to be shown circumstantially where an attorney receives many small referrals, but not when he receives a few important ones. On this theory, attorneys whose clients are wage-earners and are numerous, would probably be seriously affected; attorneys whose clients are men of large affairs, and are relatively few in number, would be affected only slightly, if at all.

The Special Committee, for example, took special note of the fact that a small number of firms represent a large number of claimants before the Industrial Accident Commission. This was seized upon as proof of the need of Rule 20. The Committee apparently was not aware of or interested in the fact that the defense or opposition to these claims is handled by an even smaller number of firms representing insurance companies.

It would appear that in the eyes of the proponents of Rule 20, referrals or recommendations by an association are inherently unethical, while recommendations or referrals by corporations, insurance companies, banks and title companies are proper. To state the proposition in this way is to expose not only the unconstitutionality but the absurdity of the proposed Rule. Certainly the Board is not proposing that the ethics of a lawyer's practice be determined by the social or economic status of his clients.

While both the Rule and the Special Committee Report would bar recommendations and referrals by associations, no attempt has been made to determine whether such practices as have developed are in response to legitimate public needs. Indeed, while the subject assigned to the Special Committee was Group Legal Services, it is clear to anyone who reads the report that no serious attempt was made to probe into the adequacy of legal aid among working men and lower income groups. The Committee was largely content to seek evidence regarding referrals and recommendations. It did not undertake to study the causes or to determine whether such referrals and recommendations met some legitimate demand.

The principal means which have developed to meet the wide-spread need for legal services in small uneconomic

matters, normally not acceptable to attorneys, seem to involve one of two features. Some types of matters, notably industrial accident cases, apparently can be made to pay their way if handled in large numbers. Specialization enables the attorneys involved to handle such cases with maximum efficiency, so that severely limited fees provided by law are adequate. Other types of matters too small to be accepted by the ordinary practitioner have been handled by attorneys who feel a special obligation to serve the members of the organization they represent. Such matters consist largely of minor debtor-creditor controversies, wage garnishments, wage claims, some domestic matters, minor criminal charges, repossessions of chattels and eviction defenses. Again, specialization and volume play a role for the loss incurred in handling small matters is minimized if the practitioner meets frequently with the same problems and thereby acquires the capacity to deal with them rapidly and efficiently.

A large proportion of the legal services rendered by attorneys representing, for example, labor unions, to clients who are referred to them by unions are of this character. Prohibition of special referrals will not promote free choice of attorneys. Rather, it will deprive these citizens of the only services that are now available to them.

It is no answer to these people to say to them that Legal Aid and Lawyers Referral Services are available. Legal Aid is only for the indigent. The fatal defect in Lawyers Referral is that it is impersonal. No corporation would choose an attorney in this fashion; ordinary citizens want the same assurance that their attorney is not only competent but interested. Quite understandably they are anxious to secure the services of the attorney who has demonstrated his ability and his concern in his handling of their organization's problems.

Rule 20 would not raise the ethics of the legal community one iota. Nor would it provide any certainty with respect to the manner in which the individual attorney must conduct himself. Nor is Rule 20 a simple codification, as its proponents urge. Rather it constitutes a basic restriction on the rights of the public. It would further limit the public's opportunity to secure adequate legal services. It would effect a radical and undesirable change in the well established and approved practices by which attorneys obtain business. The Rule is discriminatory and anachronistic. It would cure no evils and create many.

In my opinion, the Bar would be far exceeding its proper role if it adopted legislation of the kind set forth in Rule 20. Unless we abandon this Rule and turn our attention to the pressing problems which are within our jurisdiction we can be certain that the public and the legislature will not sit idly by.

PROPOSED RULE 20: A NECESSARY SAFEGUARD . . . *from page 275*

However, *every one* of the criticisms which the Brief levels at legal aid, lawyers reference and public defender services can likewise be leveled at an existing union group plan of the type that the Brief acknowledges would be prohibited by Rule 20 and which the Brief refers to as the "closest approach" to a true group legal service plan in California:[15] *i.e.*, the Group Legal Assistance Program of the Los Angeles Hotel-Restaurant Industry Emergency Relief Fund. The limitations of the Fund are best set forth in the words of the head of the unions involved in the Fund:[16]

"The first and most notable thing about the Emergency Relief Fund is that it is strictly a charitable trust, its benefits being available only to those who are 'in need, suffering hardship or financial crisis'. Before any employee receives any benefits of any kind from this Fund, he must be certified as being 'in need, suffering hardship of [sic] financial crisis'. The three employer-trustees have developed a program of benefits which includes legal assistance of certain limited types, in certain limited cases, in both civil and criminal matters. . . .

"The legal assistance offered by the Emergency Relief Fund is restricted in three ways. First, it is not available to all eligible members: it is only available to those who are certified as being in need. Second, because of the limited funds available, it offers in civil matters only one hour's free legal advice in the attorney's office and does not cover any legal representation in court. Third, the program is limited to those types of cases which do not involve a conflict of interest and which do not have any 'built-in' fee arrangement which would enable the individual to pay for the legal services himself. Thus, under the latter limitation, there are excluded all divorce cases (because of the conflict of interest), all personal injury, probate, workmen's compensation and business cases, for in these situations inherent in the legal problem is a fee arrangement which permits the employee to pay his lawyer's fee himself. Also excluded are any cases involving a dispute between the employee on the one hand, and an employer, the union, the Trust or any of the insurers under the Trust, on the other hand. This latter exclusion, of course, is based on a conflict of interest situation.

"At first glance, therefore, it would seem that we had excluded practically the entire field of legal problems. Actually, however, as our survey showed in advance and as experience has proved in operation, there have been a tremendous number of situations in which people in need, who had no money to pay a lawyer, needed legal assistance even though it was limited to an hour's advice in the office, during which the attorney explained to the employee his rights or obligations and how to go about solving his legal problem, telling him, also, where he could get further help if he needed it. In all such cases where further help was needed by the employee and court representation required, the employee was referred to the Lawyer's Reference Service of the Los Angeles Bar Association or of other Bar Associations which have organized lawyer reference services.

"In the criminal field, the trustees have authorized legal representation for those

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[15] *Id.*, at 33.

[16] Letter to the Chairman, State Bar Committee on Group Legal Services, dated June 1, 1960. Parenthetically, the "Brief in Opposition to Proposed Rule 20", in footnote 7, p. 5, states that the appendix to the report of the State Bar Committee on Group Legal Services (State Bar Journal [November-December, 1960], Vol. 35, No. 6, pp. 710, 723-724) " . . . lists no labor unions among the organizations submitting testimony or documentary materials which were considered by the committee." However, the appendix not only lists the referenced letter (which ably sets forth the union position) as having been considered, but also lists a letter from the General Counsel of the Hotel-Restaurant Industry Emergency Relief Fund, letters from California Teachers Association, California State Employees' Association, and a letter from one of the signers of the Brief. Each of these letter was supplemented either by appearance at the Committee hearings or by printed material re services afforded or other data. Also listed as having been considered was the survey of the hotel and restaurant unions pertaining to legal needs of its members. The survey must have been thorough because, in the letter of June 1, 1960, it is stated the the survey cost a "considerable sum of money" and that the unions learned a "great deal" from it.

who are in need,—and therefore unable to pay for an attorney themselves,—to have legal advice as to how to deal with the charge they face, a lawyer to stand alongside of them at time of arraignment, plea and preliminary hearing, and to advise them through those early stages of a criminal case. Again, because of lack of funds, the Trustees have not authorized legal defense at a trial except in cases specifically authorized on an individual basis after consideration by the Trustees. . . ."

In fact, it appears that the legal aid furnished by the Group Legal Assistance Program of the Los Angeles Hotel-Restaurant Industry Emergency Relief Fund is even more narrow than that furnished by the public charitable plans which the Brief criticizes. For example, the Fund does not cover legal representation in court; all divorce cases, personal injury cases, probate matters, workmen's compensation and business cases are excluded; and where further help is needed, the employee is referred to the appropriate Lawyer's Reference Service, that every organization which the Brief criticizes as having drawbacks and as being unable to satisfy the deep demands of a person in legal trouble.

It might be argued that, since some of the limitations of the Los Angeles Hotel-Restaurant Industry Emergency Relief Fund are due to lack of funds, these limitations could be cured if more money were available. However, this same cure applies equally to legal aid, public defender and lawyers reference services; in every respect that additional funds would solve a shortcoming in the union plan, there is no reason why such funds would not also solve a similar shortcoming in a public plan.[17] In other words, one of the criticisms aimed by the Brief at lawyers reference services is that, although they may help in finding an attorney, they do not solve the problem of paying the fee; but, apparently, neither does the Hotel-Restaurant Fund. On the other hand, if there is any method of overcoming the fee problem of the Hotel-Restaurant Fund, the identical method should be able to overcome the fee problem of lawyers reference services.

Likewise, to the extent that any other shortcomings are mutual to both the Hotel-Restaurant Fund and the public services, there appears to be no reason why whatever steps or procedures will rectify the former should not also be able to rectify the latter.

In addition to the objections to proposed Rule 20 which are raised by the Brief, the labor unions appear to raise two other objections more than any other: they contend that (1) Rule 20 would have a particularly adverse effect in connection with workmen's compensation representation and (2) Rule 20 would completely prohibit reference of a union member to the attorney for the union. Neither of these objections, however, appears to be justified.

In the first place it should be noted, according to the letter partially quoted above, that whatever the shortcomings of legal aid or lawyers reference services might presently be in connection with providing attorneys to do workmen's compensation work,[18] the Hotel-Restaurant Fund (the "closest approach" to a true group legal serv-

[17]The source or availability or manner of raising of such moneys is outside the scope of this article; however, to the extent that such moneys might be or could be available to a union plan, there is no good reason why the same moneys should not be channeled directly to a public plan. For example, assuming an employer were willing to agree to wholly or partially finance group legal services, his contribution could be made directly to public legal aid instead of to the union fund. This would have the advantage of financially aiding an organization available to *all* persons who need legal aid, rather than merely to an organization available only to *union members* who need legal aid.

[18]Brief in Opposition to Proposed Rule 20, pp. 30-31.

ice plan in California [19]) does not provide *any* assistance in workmen's compensation cases. By the same token, it does not provide assistance with wage claims and it does not provide assistance in disputes between the employee and the union. Since these services are not provided anyway by the "closest approach" to a true group legal service plan, they could hardly be adversely affected by the adoption of Rule 20.

More important, however, is that there is *nothing* in the language of proposed Rule 20 which would prohibit a union from referring a member of the union to the union's attorney, either in a workmen's compensation case or in any other type of case.[20] Proposed Rule 20 does not prohibit *referrals;* what it *does* prohibit is *control* or *exploitation* of an attorney's services by an intermediary, the *direction* of an attorney by an intermediary, the employment of an attorney *by a group* to render services to *members of* the group in respect to their *individual* affairs, or the entering into *with a group* any arrangement having for its purpose or one of its purposes the rendition of services by the attorney to *members of* the group in respect to their *individual* affairs. It seems clear that a mere referral of an individual by a union to the union's attorney would not violate proposed Rule 20, absent the elements of exploitation, control or direction of the attorney by the union or absent the attorney's being employed by or arranging with the union to perform the services for the individual. In other words, one of the major objections of labor unions, *i.e.*, that Rule 20 *per se* would prohibit referrals or would prohibit attorneys with special competence in the areas of most concern to the unions and their members (the unions' attorneys) from representing both a union and its members, appears to have no foundation whatsoever in the language of the proposed Rule itself; the Rule would merely require the attorney's relation to any client who is a member of the union to be personal and his responsibility to that client direct.

b. *The Fallacy with Respect to the Functions of Labor Unions.*

The "Brief in Opposition to Proposed Rule 20" deals at some length with its contention that it is a proper function of a labor union to provide legal aid to the members of the union. However, there is at least a suggestion in the argument as presented in the Brief that such providing of legal aid is not only for the purpose of making legal services available to those who otherwise could not afford them, but is equally for the purpose of strengthening and enhancing the power of any union providing such aid. In this connection, Justice Frankfurter is quoted by the "Brief in Opposition to Proposed Rule 20":[21]

"As a practical matter, the employees expect their union not just to secure a collective agreement but more particularly *to procure for the individual employees the benefits promised.* If the union can secure only the promise and is impotent to procure for the individual employees the promised benefits, *then it is bound to lose*

[19] *Id.*, at 33.

[20] In the report of the Special Committee on Group Legal Services (State Bar Journal [November-December, 1960], Vol. 35, No. 6, p. 710, at p. 719) there appears a "statement of policy" which recites that a lawyer for a corporation, organization or group " . . . shall not have referred to him by the group, either directly or indirectly, an individual member of such group or organization for the purpose of representing such individual member with respect to legal problems concerning his individual affairs." However, such language from the "statement of policy" is nowhere to be found in the proposed Rule itself. Furthermore, the rule as originally drafted by the Special Committee has been changed and proposed Rule 20 as it now stands is not the same as that which was recommended by the Special Committee.

[21] Brief in Opposition to Proposed Rule 20 at 38, quoting from *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U.S. 437, 457.

their support." (Emphasis as supplied by the Brief.)

There are at least two additional reasons why it may be supposed that at least some labor unions are not entirely altruistic in their advocacy of group legal services for the wage earner. One reason, of course, is that at least one union, the AWOC, has frankly expressed itself that the exploitation of legal aid may be considered as a tool in the process of organizing the worker, and it is reasonable to assume that AWOC does not necessarily stand alone with this viewpoint.

In addition, it should be obvious that any labor union group legal service plan would be available only to members of the union, and not available to a non-member even if he needed the aid. This is the greatest fallacy in the unions' argument that it is their function to fulfill a substantial need for legal services among those who cannot afford them, *i.e.*, if a person is in need of legal help, *why should union membership be a condition of such help?* Even if it be conceded that such institutions as lawyers reference services, legal aid and the public defender have certain limitations, at least they are open to all who need them and are not predicated upon membership in any organization.

The question may well be asked: if labor unions are *really* concerned with providing legal aid to those who otherwise cannot afford it, why do the unions not make their contribution to such aid through existing charitable programs, rather than promoting a program which would be of no benefit to the needy non-union individual? This is a crucial question as it relates to the unions' argument that Rule 20 would deprive low-income persons of needed legal aid, for it (1) weakens the belief that the unions are sincerely altruistic in their desire to provide adequate legal services at a reasonable cost and (2) it strengthens the belief that at least one purpose of the unions is to exploit and control group legal services as an additional means toward enhanced union strength and power. Such exploitation by an intermediary of the traditionally direct duty owed by an attorney to his client should not be permitted; without the necessity of further elaboration, it should be apparent that such exploitation is fraught with potential conflicts of interest, impairment of the proper exercise of judgment in behalf of the individual client, the use of professional services toward objectives other than the needs of the individual client, and the subordination of direct responsibility to the client to exploitation or control by an intermediary.

There are many reasons why Rule 20 is salutary and why it should be adopted. It would provide a necessary safeguard against the exploitation of legal services for objectives other than the legal representation of clients. It would *not* prohibit proper referrals. It would *not* prohibit (in fact, expressly permits) the functioning of charitable legal aid associations. It would *not* prohibit an attorney from representing both an organization and members of that organization, so long as there were no element of exploitation or control.

There is a need for low cost legal services. This need may best be met by strengthening and improving existing independent legal aid institutions through the co-operation of the Bar and such other organizations as may be interested,[22] rather than by any

[22]See Tennant, *Support of Legal Aid by the Business Community*, 44 Journal of the American Judicature Society 170 (February, 1961).

system involving exploitation and control of professional services. Rule 20 is an important and vitally necessary step in order to prevent the ultimate destruction of the relationship between attorney and client.

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